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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------------------|------------------|
| 09/940,805 | 08/29/2001 | Daniel P. Stachowicz | 58880/278 | 4584 |
| 23838 | 7590 | 10/21/2004 | | |
| KENYON & KENYON 1500 K STREET, N.W., SUITE 700 WASHINGTON, DC 20005 | | | EXAMINER WEINSTEIN, STEVEN L | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1761 | |
| DATE MAILED: 10/21/2004 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/940,805

Applicant(s)

STACHOWICZ ET AL.

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 and 11-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Craig (GB 2237224) for the reasons given in the Office action mailed 3/15/04.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craig (GB' 224) in view of Ooms (Ep '006), for the reasons given in the Office action mailed 3/15/04.

Claim 1-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Craig (GB' 224) in view of Ooms (Ep '006), Berrod (FR '674), Parrish ('523) and Wechsler ('496), further in view of Janik (Ep '132), Shannon ('238), DeLorimere ('917), Moore ('654), Knight et al and applicants admission of the prior art for the reasons given in the Office action mailed 3/15/04.

All of applicant's remarks filed 7/14/04 have been fully and carefully considered but are not found to be convincing. On page 2 of the response, it is urged that Craig does not anticipate claims 1-8 and 11-14 because the coupler of Craig does not have a non-circular opening and this is how one of ordinary skill in the art would define a "decorative opening". This urging is not convincing for several reasons. The specification does not define the term decorative opening and does not disclose it must be non-circular. Also, in regard to the urging that a decorative

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opening would be restrictively defined by one of ordinary skill in the art as a non-circular opening, this is not supported by the art applied. In figures 2-6, Craig shows five different icing tube nozzles which are employed to form decorations on articles such as decorations on cakes using sugar icing (page 1, para 2). Craig further discloses that a wide range of different shaped icing tubes are available; the sizing and cross sectional shape of the outlet or the nozzle of a tube determining the form of decoration. Craig discloses scores of different shapes and sizes of icing tubes are commercially available. Among the decorative icing tubes shown in the figures are two with circular holes which Craig says can be used for writing. Writing is decorative as well, whether it is Gothic or block letters or script, and one need not form indicia but just rod shaped lines such as a representation of a ticktack toe or checkers board. Thus, it is clear that contrary to what has been urged, a "decorative opening" is not limited to a non-circular opening and Craig in fig 11 shows a smaller diameter circular opening on a nozzle and a larger circular opening on a coupler.

On page 3 of the response, it is urged that there is no suggestion to provide a coupler with a decorative opening. This urging is not convincing. As discussed in detail in the last Office action, since the art taken as a whole teaches that it was known to provide couplers in a pastry bag, that it was known to provide decorative nozzles in a pastry bag for immediate extruding, that it was known to employ either a nozzle or a couple in the bag, and that it was known that extruding nozzles can have any shape including circular or non-circular cross-sections, and it was known to employ a coupler to extrude icing with/without an additional nozzle, to provide the coupler with a decorative opening (circular or not) for its art recognized and applicants intended function is seen to have been an obvious matter of choice and/or design. In response to the

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urging that Knight does not teach a decorative opening, the fact that Knight teaches extruding the material directly through the coupler (which has a narrow opening see fig 2) is sufficient evidence that another nozzle is only necessary if a different shape is desired and the art taken as a whole clearly evidences one can employ any shape desired as a function of the design desired.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L Weinstein whose telephone number is (571) 272-1410. The examiner can normally be reached on Monday-Friday 7:00am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

S. Weinstein/af
October 18, 2004

Steven Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
10/20/04